

TASMANIA

WORKPLACE HEALTH AND SAFETY AMENDMENT BILL 2009

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**WORKPLACE HEALTH AND SAFETY
AMENDMENT BILL 2009**

*(Brought in by the Minister for Workplace Relations, the
Honourable Lisa Maria Singh)*

A BILL FOR

An Act to amend the *Workplace Health and Safety Act 1995*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Workplace Health and Safety Amendment Act 2009*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Principal Act

In this Act, the *Workplace Health and Safety Act 1995** is referred to as the Principal Act.

*No. 13 of 1995

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4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “Board”:

“chief official”, in relation to an employee organisation, means the person who has primary responsibility for the day-to-day running of the organisation in Tasmania;

- (b) by inserting “and includes an individual engaged under a labour hire arrangement” after “reward” in the definition of “contractor”;

- (c) by inserting the following definition after the definition of “employee”:

“employee organisation” means –

- (a) an employee organization registered under the *Industrial Relations Act 1984*; or
- (b) an “organisation”, within the meaning of the *Fair Work Act 2009* of the Commonwealth, that is an “employee organisation” within the meaning of that Act;

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- (d) by inserting the following definitions after the definition of “mine”:

“officer”, in relation to an employee organisation, means a person who is –

- (a) an employee of the organisation; or
- (b) the holder of an office of president, vice-president, secretary or assistant secretary of the organisation or a branch or division of the organisation; or
- (c) the holder of an office that is prescribed by the regulations;

“OHS access card” means a card issued under section 22E;

“OHS access card holder” means a person to whom an OHS access card that is in force has been issued under section 22E;

- (e) by inserting “and includes a person who engages an individual to perform work for the person under a labour hire arrangement” after “reward” in the definition of “principal”;

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- (f) by inserting the following definition after the definition of “regulations”:

“relevant duty holder”, in relation to a workplace, means a person on whom a duty is imposed under section 9 or 11 in relation to a worker at the workplace;

- (g) by inserting the following definition after the definition of “temporary public stand”:

“worker” means an individual who carries out work at a workplace and who is an employee or a contractor;

- (h) by inserting “, and includes a part of a workplace” after “industry” in the definition of “workplace”.

5. Part 3A inserted

After section 22 of the Principal Act, the following Part is inserted:

**PART 3A – RIGHTS OF ENTRY FOR OHS ACCESS
CARD HOLDERS**

Division 1 – Issue of OHS access cards

22A. Object of Part

The object of this Part is to establish a framework –

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- (a) to assist in securing the health and safety of workers by enabling employee organisations to –
 - (i) represent their members, or persons eligible to be their members, in matters concerning health and safety; and
 - (ii) discuss, with workers at workplaces, matters relating to health and safety; and
 - (iii) identify, and make enquiries in respect of, health and safety issues at workplaces; and
 - (iv) consult with relevant duty holders and persons in charge of workplaces so as to make the resolution of health and safety issues at workplaces easier; and
- (b) that balances the securing of the health and safety of workers in accordance with paragraph (a) with the right of relevant duty holders and persons in charge of workplaces to go about their business without undue intervention or hindrance.

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22B. Operation of certain other laws not affected

- (1) Nothing in this Part is to be taken to affect the operation of the *Industrial Relations Act 1984*.
- (2) An OHS access card holder is not authorised under this Part to enter or remain at a workplace if to do so would contravene a requirement of, or imposed under, a law of this State or the Commonwealth, which requirement –
 - (a) excludes persons from places or prohibits persons from remaining on places; and
 - (b) is for the purposes of enabling an offence to be investigated, law and order to be maintained, or an emergency to be dealt with.

22C. Application for OHS access card

- (1) The chief official of an employee organisation may apply to the Director, on a form approved by the Director, for the issue of an OHS access card to a person nominated in the application.
- (2) A person may only be nominated in an application under subsection (1) by a chief official of an employee organisation if the person is –
 - (a) the chief official; or

- (b) an officer of the employee organisation.

22D. Criteria for issue of OHS access cards

- (1) Subject to subsection (2), the Director may only issue an OHS access card to a person under section 22E if the Director is satisfied that the person –
 - (a) is an officer of an employee organisation; and
 - (b) holds an entry permit issued under the *Fair Work Act 2009* of the Commonwealth; and
 - (c) has the knowledge, the qualifications, the experience, or the training, that is appropriate for a person who may exercise the powers under this Part of an OHS access card holder.
- (2) The Director may exempt a person from the application of subsection (1)(b) if –
 - (a) the person is nominated under section 22C(1) by a chief official who has given to the Director a declaration in accordance with subsection (3); and
 - (b) the Director is satisfied that the person is a fit and proper person to be an OHS access card holder.

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(3) A chief official of an employee organisation registered under the *Industrial Relations Act 1984* that –

- (a) is not an “organisation”, within the meaning of the *Fair Work Act 2009* of the Commonwealth; and
- (b) does not provide services to persons who are “national system employees” within the meaning of that Act –

may give to the Director a declaration in writing to that effect.

(4) The Director must, in considering for the purposes of subsection (2)(b) whether a person is a fit and proper person to be an OHS access card holder, take into account whether –

- (a) the person has ever been convicted of an offence against a law of this State, another State, a Territory, or the Commonwealth, relating to industrial relations; or
- (b) the person has ever been convicted of an offence against a law of this State, another State, a Territory, the Commonwealth or a foreign country, involving –
 - (i) entry onto premises; or
 - (ii) fraud or dishonesty; or

- (iii) intentional use of violence against another person or intentional damage or destruction of property; or
- (c) the person, or any other person, has ever been ordered to pay a penalty under any other law of this State, another State, a Territory, or the Commonwealth, relating to industrial relations, in relation to action taken by the first-mentioned person; or
- (d) the person has been disqualified under section 22M(4)(c) from holding an OHS access card, or a condition has been imposed under section 22M(4)(d) on an OHS access card issued to the person; or
- (e) a court, or other person or body, has, under a law of this State, another State, a Territory, or the Commonwealth, relating to industrial relations –
 - (i) cancelled or suspended, or imposed conditions on, a right that the person has under that law to enter a place for industrial or health and safety purposes; or

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- (ii) disqualified the person from exercising, or applying for the right to exercise, a power under that law to enter a place for industrial or health and safety purposes.
- (5) The Director may publish guidelines as to either or both of the following:
 - (a) the qualifications, the experience, or the training, that is appropriate for a person who may exercise the powers under this Part of an OHS access card holder;
 - (b) how the Director intends to assess whether a person has such knowledge, qualifications, experience or training.
- (6) Guidelines made for the purposes of subsection (5) may apply to all industries or to a particular industry specified in the guidelines.

22E. Issue of OHS access cards

- (1) The Director may, after receiving an application under section 22C(1), issue, or refuse to issue, an OHS access card to the person nominated in the application as the person to whom the card is to be issued.

- (2) The Director must notify a chief official who has made an application under section 22C of the Director's decision under subsection (1) in relation to the application.
- (3) The issue of an OHS access card under this section on the application of the chief official of an employee organisation does not prevent the issue under this section of further OHS access cards to persons on the application of the chief official.
- (4) An OHS access card may be issued to a person whether or not the person is resident in this State.
- (5) An OHS access card issued to a person is to contain –
 - (a) a statement that the person is authorised to enter certain workplaces under this Act subject to the Act and the conditions, if any, imposed on the card; and
 - (b) the name and a photograph of the person; and
 - (c) the name of the employee organisation of which the person is an officer.
- (6) The Director may specify on an OHS access card any other information the Director thinks fit.

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- (7) An OHS access card remains in force for 3 years from the date on which it is issued, unless the person to whom it is issued ceases earlier under section 22L to be an OHS access card holder.

22F. Conditions of issue of OHS access cards

- (1) The Director may, at the same time as the Director issues under section 22E an OHS access card to a person, impose a condition on the card by instrument in writing to the person.
- (2) A condition may only be imposed by the Director under subsection (1) if it is relevant to the objects of this Part.
- (3) The Director is to notify the chief official who applied for the issue of an OHS access card to a person of any conditions that the Director has imposed on the card under subsection (1).
- (4) An OHS access card holder must comply with any conditions imposed on the card under subsection (1) or under section 22M(4).

Penalty: Fine not exceeding 50 penalty units.

***Division 2 – Rights and responsibilities in relation to OHS
access card holders***

22G. Rights of entry of OHS access card holders

- (1) An OHS access card holder may, in accordance with this section, enter a workplace at which one or more workers who are eligible to be members of the employee organisation specified on the card perform work, whether or not they are in fact members of the employee organisation.
- (2) An OHS access card holder may only enter a workplace under this section during the hours at which workers perform work at the workplace.
- (3) An OHS access card holder may only enter a workplace under this section for the purpose of –
 - (a) discussing with the workers, during a meal break or other break in work, health or safety issues relevant to the workplace; or
 - (b) enquiring into, or facilitating the resolution of, a health or safety matter that has arisen at the workplace.
- (4) An OHS access card holder may only enter under this section premises that are

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used mainly for residential purposes if the occupier of the premises consents to the entry.

22H. Rights of OHS access card holder after entry of workplace

- (1) An OHS access card holder who enters a workplace under section 22G may, while at the workplace, exercise one or more of the following powers:
 - (a) with the consent of a worker at the workplace, consult with, discuss with, or make enquiries of or with, workers at the workplace at times –
 - (i) that are convenient to a relevant duty holder at the workplace or the person in charge of the workplace; or
 - (ii) that are appropriate;
 - (b) consult with a relevant duty holder at the workplace about health or safety matters;
 - (c) observe or review work, the workplace, processes, plant, equipment or the use of materials and substances at the workplace, and, if relevant, take photographs

of the thing observed or reviewed;

(d) review documents or parts of documents relating to, or directly relevant to, health or safety at the workplace;

(e) consult with inspectors at the workplace.

(2) An OHS access card holder may not exercise a power under subsection (1)(d) if to do so would contravene a law of this State or the Commonwealth.

(3) An OHS access card holder who enters a workplace under section 22G may request a relevant duty holder to remove information from, or obscure information in, a document at the workplace, so as to ensure that a law of this State or the Commonwealth would not be contravened by the exercise of the card holder of a power under subsection (1)(d).

(4) A relevant duty holder to whom a lawful request is made by an OHS access card holder under subsection (3) must, so far as reasonably practicable, comply with the request.

Penalty: Fine not exceeding 20 penalty units.

22I. Offences by OHS access card holders

- (1) An OHS access card holder must not, after purporting to be authorised to do so under section 22G(1), enter a workplace under section 22G if he or she knows, or ought reasonably to be expected to know, that he or she is not authorised under section 22G(1) to do so.

Penalty: Fine not exceeding 50 penalty units.

- (2) An OHS access card holder must not –
- (a) enter a workplace, purportedly under section 22G, for a purpose other than a purpose specified in section 22G(3); or
 - (b) enter a workplace under section 22G and perform an action at the workplace for a purpose other than a purpose specified in section 22G(3).

Penalty: Fine not exceeding 50 penalty units.

- (3) An OHS access card holder must, as soon as reasonably practicable after entering a workplace under section 22G, or if requested to do so by the person in charge of the workplace, produce his or her OHS access card to the person in charge of the workplace.

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Penalty: Fine not exceeding 10 penalty units.

- (4) An OHS access card holder must not, without the consent of the occupier of the premises, purport to enter under section 22G premises that the card holder knows to be premises used mainly for residential purposes.

Penalty: Fine not exceeding 50 penalty units.

- (5) An OHS access card holder must not exercise a power under this Part in relation to a workplace unless he or she complies with any reasonable request, by the person in charge of the workplace, to comply with a health or safety requirement that applies at the workplace.

Penalty: Fine not exceeding 50 penalty units.

- (6) An OHS access card holder exercising, seeking to exercise, or purporting to exercise, a power in accordance with this Part must not intentionally hinder or obstruct any person.

Penalty: Fine not exceeding 50 penalty units.

- (7) A person to whom an OHS access card has been issued must return the card to the Director within 14 days after –

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- (a) the card expires; or
- (b) the person ceases under section 22L to be an OHS access card holder.

Penalty: Fine not exceeding 5 penalty units.

22J. Offences by persons in relation to OHS access card holders

- (1) A person must not intentionally hinder or obstruct an OHS access card holder exercising a power in accordance with this Part.

Penalty: Fine not exceeding 50 penalty units.

- (2) Without limiting subsection (1), that subsection extends to hindering or obstructing that occurs after an entry notice is given but before an OHS access card holder enters premises.

- (3) A person must not refuse or delay entry onto a workplace by an OHS access card holder who is authorised to enter the workplace under section 22G.

Penalty: Fine not exceeding 50 penalty units.

- (4) A person must not take action –

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(a) with the intention of giving the impression; or

(b) reckless as to whether the impression is given –

that the doing of a thing is authorised by this Part if it is not so authorised.

Penalty: Fine not exceeding 50 penalty units.

(5) A person must not, for a purpose other than a purpose specified in section 22G(3), use or disclose information obtained under section 22H, unless –

(a) the person reasonably believes that the use or disclosure is necessary to lessen or prevent –

(i) a serious and imminent threat to an individual's life, health or safety; or

(ii) a serious threat to public health or public safety; or

(b) the person has reason to suspect that unlawful activity has been, is being, or may be, engaged in, and the person uses or discloses the information as a necessary part of investigating the matter or in reporting concerns to relevant persons or authorities; or

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- (c) the use or disclosure is required or authorised under the laws of this State or the Commonwealth; or
- (d) the person reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by, or on behalf of, an enforcement agency within the meaning of the *Privacy Act 1988* of the Commonwealth:
 - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a law prescribed by the regulations;
 - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
 - (iii) the protection of the public revenue;
 - (iv) the prevention, detection, investigation, prosecution or remedying of seriously improper conduct or conduct that is prescribed by the regulations;

- (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal; or
- (e) the information is personal information within the meaning of the *Privacy Act 1988* of the Commonwealth and the use or disclosure is made with the consent of the individual to whom the information relates.

Penalty: Fine not exceeding 50 penalty units.

22K. Referral of disputes to inspectors

- (1) An OHS access card holder, a relevant duty holder in relation to a workplace or a person in charge of a workplace may refer to an inspector any question, issue or dispute relating to –
 - (a) the power of the card holder to enter a workplace under section 22G; or
 - (b) the exercise by the OHS access card holder, after he or she has entered a workplace, of a power

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conferred on him or her under this Part; or

(c) a health or safety issue in relation to the workplace.

(2) If a question, issue or dispute is referred to an inspector under subsection (1), the inspector must attempt to resolve the matter by agreement between –

(a) the OHS access card holder; and

(b) the relevant duty holder or holders in relation to the workplace; and

(c) the person in charge of the workplace.

(3) If an inspector is unable to resolve by agreement a question, issue or dispute relating to the power of an OHS access card holder to enter a workplace under section 22G, the inspector may –

(a) if he or she is of the opinion that the requirements for entry to the workplace under that section have been satisfied, order that all relevant duty holders and the person in charge of the workplace must allow the OHS access card holder to enter the workplace; or

(b) if he or she is of the opinion that the requirements for entry to the

workplace under that section have not been satisfied, order that the OHS access card holder must not enter the workplace until the requirements are satisfied; or

- (c) take any action that is prescribed by the regulations for the purposes of this section or that the inspector could otherwise take under this Act.
- (4) If an inspector has made an order under subsection (3)(b) in respect of an OHS access card holder, the inspector must determine whether action ought to be taken under this Act by an inspector in relation to the health or safety issue for the purpose of which the OHS access card holder sought entry to the workplace.
- (5) If an inspector is unable to resolve by agreement a question, issue or dispute relating to the exercise or performance by an OHS access card holder, after he or she has entered a workplace, of a power conferred on the card holder under this Part, the inspector may –
- (a) if he or she is of the opinion that the exercise by the OHS access card holder of the power is authorised under this Part, order that each relevant duty holder in relation to the workplace and the

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person in charge of the workplace must allow the OHS access card holder to exercise the power; or

- (b) if he or she is of the opinion that the exercise by the OHS access card holder of the power is not authorised under this Part, order that the OHS access card holder must not exercise the power.
- (6) If an inspector is unable to resolve by agreement a question, issue or dispute relating to a health or safety issue referred to the inspector under subsection (1), the inspector must determine whether action in relation to the health or safety issue ought to be taken under this Act by an inspector.
 - (7) An order under this section directed at a person in relation to a question, issue or dispute –
 - (a) may be given by notice in writing to the person; or
 - (b) may be given orally to the person.
 - (8) If an order is given orally by an inspector to a person under subsection (7)(b), the inspector, within 48 hours after giving the order, must give to the person notice in writing setting out the order.
 - (9) A person must not, without reasonable excuse, fail to comply with an order

made under this section given to the person.

Penalty: Fine not exceeding 50 penalty units.

- (10) An inspector who gives an order to a person under this section is, within 48 hours after giving written notice under subsection (7) or (8), to give notice in writing to the other persons referred to in subsection (1) with whom the inspector attempted to resolve the question, issue or dispute in relation to which the order was given.

Division 3 – Expiry, cancellation and disqualification from holding OHS access cards

22L. When person ceases to be OHS access card holder

- (1) A person to whom an OHS access card has been issued ceases to be an OHS access card holder if –
- (a) the person ceases to be an officer of the employee organisation specified on the card; or
 - (b) the person ceases to hold an entry permit issued under the *Fair Work Act 2009* of the Commonwealth and is not a person who was exempted under section 22D(2) from the

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- application of section 22D(1)(b);
or
- (c) the card is cancelled under subsection (4); or
 - (d) the person is disqualified under section 22M from holding an OHS access card.
- (2) An OHS access card holder may, by notice in writing to the Director, request the Director to cancel the card from a date, specified in the notice, that is later than the date on which the notice is given.
- (3) The chief official of an employee organisation specified on an OHS access card issued to an officer of the employee organisation may, by notice in writing to the Director, request the Director to cancel the card from a date, specified in the notice, that is later than the date on which the notice is given.
- (4) If a notice is given to the Director under subsection (2) or (3) in relation to a person to whom an OHS card has been issued, the Director may, from the date requested in the notice, cancel the card.

22M. Disqualification &c. of OHS access card holders

- (1) A relevant person in relation to an OHS access card holder may apply to the Director for the Director to disqualify an OHS access card holder from holding an OHS access card.
- (2) For the purposes of subsection (1), a relevant person in relation to an OHS access card holder is –
 - (a) a worker at a workplace at which the card holder has exercised a power under this Part; or
 - (b) a person in charge of a workplace at which the card holder has exercised a power under this Part; or
 - (c) a relevant duty holder in respect of a workplace at which the card holder has exercised a power under this Part.
- (3) An application under subsection (1) in relation to an OHS access card holder is to –
 - (a) specify the grounds under this section on which the application is made; and

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- (b) specify the circumstances that the person believes give rise to the grounds.
- (4) The Director may –
 - (a) after receiving an application under subsection (1); or
 - (b) of his or her own motion –
by notice in writing to an OHS access card holder –
 - (c) disqualify the person from holding such a card permanently, or for a period, as specified in the notice; or
 - (d) impose conditions on the OHS access card.
- (5) The Director may only disqualify a person from holding an OHS access card, or impose conditions on the OHS access card issued to an OHS access card holder, on grounds prescribed in the regulations or on the grounds that –
 - (a) the Director is satisfied, on reasonable grounds, that the person has –
 - (i) used the OHS access card for purposes other than the purposes, specified in

- section 22G(3), for which the card was issued; or
- (ii) used or disclosed, for purposes that are not authorised under this Part, information obtained in the exercise of powers of the OHS access card holder under this Part; or
 - (iii) taken, without authority, documents obtained at a workplace that the person has entered under this Part; or
- (b) the Director is satisfied, on reasonable grounds, that the person has contravened a condition imposed on the OHS access card issued to the person; or
- (c) the Director is satisfied, on reasonable grounds, that the person has, in exercising, seeking to exercise, or purporting to exercise, a power in accordance with this Part, intentionally hindered or obstructed another person; or
- (d) the person has committed an offence against this Part.

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- (6) The Director may only disqualify a person from holding an OHS access card, or impose a condition on the OHS access card issued to a person, if –
- (a) the Director has, at least 14 days before, invited the person to show cause why the person should not be disqualified under this section or the condition should not be imposed on the OHS access card issued to the person; and
 - (b) the person has, within the period referred to in paragraph (a), been given a reasonable opportunity to show cause to the Director why the person should not be disqualified under this section or the condition should not be imposed on the OHS access card issued to the person; and
 - (c) the Director issues to the person reasons in writing for the disqualification or the imposition of the condition on the OHS access card issued to the person.

6. Section 27 amended (Composition of health and safety committee)

Section 27 of the Principal Act is amended as follows:

- (a) by omitting from subsection (4) “a union” and substituting “an employee organisation”;
- (b) by omitting subsection (7).

7. Section 41 amended (Right of appeal)

Section 41 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (a) in subsection (1):
 - (ab) an order of an inspector of which notice in writing has been given to the person under section 22K(7) or (8); or
- (b) by inserting in subsection (4) “notice given to a person under section 22K(7) or (8), or a” after “against a”.

8. Schedule 1 amended (Regulations)

Clause 21 of Schedule 1 to the Principal Act is amended by inserting “and matters to which Part 3A relates” after “committees”.

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9. Repeal

This Act is repealed on the ninetieth date from the day on which all of the provisions of this Act commence.